

# COUNCIL MONITOR

International Service for Human Rights



Human Rights Monitor Series

## COUNCIL UPDATE – ITEM 9 HUMAN RIGHTS COUNCIL, 12<sup>TH</sup> SESSION 30 SEPTEMBER 2009

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### Overview

The Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Mr Githu Muigai, under agenda item 9 presented his recent report on ‘all manifestations of defamation of religions, and in particular on the serious implications of Islamophobia, on the enjoyment of all human rights by their follower’ to the Human Rights Council (the Council) on 30 September 2009.<sup>1</sup>

During the interactive dialogue with the Special Rapporteur on racism, racial discrimination, xenophobia and related intolerance two opposing positions became apparent. Several Islamic States supported the concept of ‘defamation of religions’, whereas other mainly non-Islamic States rejected the concept as not relevant to international human rights law. Countries in favour of the concept attacked the Special Rapporteur for having engaged in a theoretical discussion on the issue in the report rather than having taken stock of the various manifestations of ‘defamation of religion’. These States also strongly criticised the Special Rapporteur’s conclusion that the existing international legal framework provides effective mechanisms to combat and protect people from religious discrimination. In contrast European and Latin American States as well as the US welcomed the approach taken by the Special Rapporteur to look at the issues related to ‘defamation of religions’ within the existing legal framework for the protection against incitement to hatred. They claimed that the existing framework, including the *International Convention on the Elimination of All Forms of Discrimination (ICERD)* and the *International Covenant on Civil and Political Rights (ICCPR)* and the *Durban Declaration and Programme of Action (DDPA)*, provides norms and standards to guide governments to combat religious discrimination. States that generally were supportive with regards to the Special Rapporteur’s report reiterated that the focus of the report on Islamophobia does not reflect religious intolerance fully as it is apparent worldwide and not only affects one specific religion or region.

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<sup>1</sup> A/HRC/12/38 available at <http://www2.ohchr.org/english/bodies/hrcouncil/12session/reports.htm>

In response to the criticism of not adequately addressing the issue of ‘defamation of religions’ and overstepping his mandate, the Special Rapporteur stated that by building on the work of the previous Special Rapporteur he believed the creation of a theoretical framework was needed.

Libya, Pakistan and Iran interrupted an NGO intervention at the end of the interactive dialogue arguing that the NGO could not address country specific situations under item 9 of the Council’s agenda. Sweden, the US, and Switzerland argued that NGOs can refer to specific country issues to illustrate their arguments. Switzerland reiterated that there has been a Presidential Statement that allowed NGOs reference specific issues to prove their point. After a several interventions the Council’s President, Ambassador Alex Van Meeuwen, stated that comments, which are not directly linked to the report under discussion are ‘out of order’.

Special Rapporteur on racism, racial  
discrimination, xenophobia and related  
intolerance

The Special Rapporteur, Mr Githu Muigai, underscored that he draws on the work of the previous Special Rapporteur and pursues his work in finding a way to renew the approach to ‘defamation of religions’ by focusing on existing human rights norms that offer protection to individuals. He stated further that the ‘terminology controversy’ regarding the concept of ‘defamation of religions’ has distracted the attention of the Council from real problems. He therefore recommended focusing on the rights of individuals and groups that have been affected by racial and religious intolerance, discrimination or violence, as well as on the prevention of those acts. He stated that his report is an attempt to move the debate forward on the issue.

Mr Muigai emphasised that the **expert seminar organised by OHCHR last October on the links between article 19 and 20 of the ICCPR** was an important development in this area. The experts identified the need to attain better understanding of the legislative patterns, judicial practices and national policies with regard to the concept of incitement to hatred. The experts accepted that the debate on ‘defamation of religions’ should rather focus on the existing legal concept of incitement to racial or religious hatred. Furthermore the experts agreed in addition to legislation against hate speech, a wide array of actions is needed to combat this phenomenon. As relevant actions the role of education, the need to strengthen professionalism of the media, and the promotion of inter- and intra-religious dialogue were mentioned.

Mr Muigai identified the adoption of the *Outcome Document of the Durban Review Conference* as another crucial development in the area of combating religious discrimination.<sup>2</sup> According to the Special Rapporteur the Outcome Document reached a balance in reaffirming the importance of freedom of expression and highlighting the need to curb hate speech. It also offers adequate tools to address intolerant and discriminatory acts affecting individuals or groups.

In his report Mr Muigai draws on information received from the Islamophobia Observatory of the Organisation of the Islamic Conference and from the European Agency for Fundamental Rights. Based on the information received he made a **distinction between four types of behaviour related to religious intolerance and discrimination**.<sup>3</sup>

Mr Muigai stressed that even though he focused on one specific region and religion in his report, there are other regions and religions also affected by instances of religious discrimination and incitement to religious hatred, which should be addressed. He argued that no hierarchy of the different manifestations of discrimination should be

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<sup>2</sup> Draft available under [http://www.un.org/durbanreview2009/pdf/Durban\\_Review\\_outcome\\_document\\_En.pdf](http://www.un.org/durbanreview2009/pdf/Durban_Review_outcome_document_En.pdf)

<sup>3</sup> These are the following: Intolerant mentalities, which do not constitute human rights violations, but may lead to such violations; Advocacy of racial or religious hatred that constitutes incitement to discrimination, hostility or violence and which is prohibited in international human rights law; Discrimination against members of religious or belief communities which is also prohibited by international human rights law; Acts of violence perpetrated against members of religious or belief communities which constitute a blatant human rights violation.

established and the current focus of the report should also not detract attention from intra-religious dimension of discrimination.

The Special Rapporteur also referred to the **joint statement on ‘freedom of expression and incitement to racial or religious hatred’** presented by the Special Rapporteur on freedom of religion or belief and the Special Rapporteur on the protection and promotion of the right to freedom of opinion and expression. In the statement the mandates reaffirmed that the right to freedom of expression constitutes an essential aspect of the right to freedom of religion as well as the fight against racism. The statement claims that it is inaccurate to present the notion of ‘defamation of religions’ as a conflict between the right to freedom of religion and the right to freedom of expression. The statement also suggests that due to the difficulty in providing a definition of the term ‘defamation of religions’ the debate should be anchored in the relevant legal framework provided by articles 19 and 20 of the ICCPR. Supporting the expert seminar the mandate holders emphasised that legal responses to hate speech are not sufficient and a broader set of policy issues is needed to tackle the root causes of intolerance.

Mr Muigai supported the suggestion in the Durban Review Conference Outcome Document that a series of expert workshops should be held to attain a better understanding of the legislative pattern, judicial practices and national policies with regard to combating incitement to hatred.

The Special Rapporteur concluded by highlighting that only the implementation of existing legal provisions in article 4 of ICERD and article 20 of the ICCPR will address the issues of concern and move the debate forward.

### Interactive dialogue

During the interactive dialogue two main and opposing positions became apparent. Several States<sup>4</sup> and regional groups, including the Organisation of Islamic Conference (OIC), the African Group, the Arab Group and the Non Aligned Movement (NAM) criticised the Special Rapporteur for not adequately addressing the issue of the manifestations of ‘defamation of religions’ as requested in *Council Resolution 10/22*. Nigeria (on behalf of the African Group) and Pakistan (on behalf of the OIC) claimed that the Special Rapporteur overstepped his mandate and breached the Code of Conduct for special procedures mandate holders as contained in *Resolution 5/2*. The main argument put forward was that instead of taking stock of the various forms of manifestations of ‘defamation of religions’, the Special Rapporteur ‘dwelled extensively on the conceptual debate on the issue of defamation of religions and incitement to religious hatred, invariably redefining the mandate’.<sup>5</sup> Pakistan (on behalf of the OIC) claimed that ‘instead of fulfilling his mandate, the Special Rapporteur has preferred to question the validity of the very clearly defined mandate in accordance with his subjective and selective interpretation or preference.’ Pakistan further stated that the report contains ‘unfounded and distorted assertions that lead to the confusion of the existing narrative of this sensitive subject.’ Algeria and Nigeria (on behalf of the African Group) criticised the conclusion of the Special Rapporteur that the existing legal standards are sufficient for protecting against religious discrimination. They argued that this conclusion is contradictory to the mandate of the Ad Hoc Committee on Complementary Standards, which shall prepare complementary standards to strengthen and update international instruments against racism, racial discrimination, xenophobia and related intolerance. Qatar, Indonesia, and Iraq stressed that it is not enough to denounce acts that are linked to religious discrimination, but that acts and policies which are based on racial and religious hatred need to be criminalised.

On the other hand, several other States supported the Special Rapporteur’s approach to move away from the sociological concept of ‘defamation of religions’ and to deal with the concerns behind the concept within the existing legal framework regarding incitement to hatred.<sup>6</sup> France, Sweden (on behalf of the EU), Switzerland and Chile stated that the existing international legal framework provides equal and effective protection against discrimination on the basis of religion or belief. States referred in particular to the ICCPR, ICERD, DDPA, and the Outcome Document of the Durban Review Conference as reference points for the protection from religious

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<sup>4</sup> Iran, Iraq, Malaysia, Algeria, Tunisia, Pakistan, Syria, Qatar, Azerbaijan, Indonesia.

<sup>5</sup> Nigeria (on behalf of the African Group).

<sup>6</sup> Sweden (on behalf of the EU), Norway, Switzerland, USA, Brazil, Switzerland, France, Chile.

discrimination and incitement to hatred. These States underscored that they do not regard the concept of ‘defamation of religions’ as valid in the human rights discourse, as international human rights law protects individuals in the exercise of their freedom of religion or belief, but it does not protect specific belief systems. Even though these States generally supported the Special Rapporteur’s approach they reiterated that religious intolerance is a worldwide problem and not limited to certain regions or certain religions or beliefs. Sweden (on behalf of the EU) claimed that the issue of religious intolerance and discrimination should be mainly dealt with by the Special Rapporteur on freedom of religion. Several States shared the view of the Special Rapporteur that discrimination is rooted in intolerance and that to tackle the root causes, a broad set of policy measures, including in the areas of intercultural dialogue and education, is needed.<sup>7</sup> Norway supported the Special Rapporteur’s distinction of four types of behaviour related to religious intolerance. Brazil emphasised the importance of intercultural and inter-faith dialogue to combat religious discrimination. Brazil announced that it will hold the 3<sup>rd</sup> World Forum on Alliance of Civilisations in May 2010.

NGOs such as Interfaith International, the Cairo Institute for Human Rights Studies and UN Watch supported the approach of the Special Rapporteur to consider ‘defamation of religions’ under the perspective of incitement to religious hatred. The Cairo Institute stated that the concept of ‘defamation of religions’ and resolutions on the topic are not effective in protecting religious adherents against discrimination. Often resolutions on the issue are worded in a manner that allows governments to justify policies or actions that are in conflict with international human rights standards and unduly restrict freedom of expression. During the dialogue with NGOs Iran, Pakistan and Libya intervened by criticising that NGOs discussed country specific situations, whereas they should have only addressed the report of the Special Rapporteur. The Council’s President ended the procedural discussion by arguing that comments, which are not directly linked to the report under discussion are out of order.

### Concluding remarks by the Special Rapporteur

The Special Rapporteur emphasised that real and serious problems exist relating to religious intolerance and Islamophobia. He explained that he saw the need to firstly identify an effective legal framework in order to discuss these issue further. He refuted the claim that the report was an intellectual exercise and pointed to specific cases of manifestations that were outlined in the report. Moreover, he intended to anchor remedies and responses in legal standards as it is thus easier to hold States accountable. The Special Rapporteur reiterated that the discussions on the development of complementary standards are useful, but that the outcome is yet to be seen.

### General debate on racism

Sweden (on behalf of the EU) opened the general debate on racism, racial discrimination and related intolerance (Item 8) by expressing that all human rights violations are equally unacceptable, and there was therefore no value in categorising different manifestations of racism. Urging that States step up efforts to combat forms of **multiple discrimination** based on race and on age, descent, sexual orientation or gender identity,<sup>8</sup> it underlined that the Committee on the Elimination of Racial Discrimination remained the primary international mechanism to combat racial discrimination, and that States needed to take their obligations seriously in reporting to it. Finally, Sweden noted the important role of NGOs in combating racism, and the need to ensure that they are given the necessary financial support to continue their important work.

Egypt (on behalf of NAM) focused its statement on religious discrimination, expressing its dismay at religious and cultural intolerance which undermines the enjoyment of all rights. It stated that racial and religious profiling should not be condoned, and that ‘**defamation of religions**’ is wrongly justified on the grounds of freedom of expression, where such rights should be made subject to limitations on the grounds of national security, public order or morals. It deplored what it termed ‘ideological violence’, and called for legal protection against

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<sup>7</sup> Switzerland, USA.

<sup>8</sup> Belgium also stated that many States continue to criminalise same sex relations. The African Union made reference to new multiple forms of discrimination.

‘defamation of religion’. China also alleged that freedom of speech was intentionally used as an excuse to hurt Islam and its followers. South Africa considered that it was imperative to build on the good work of various special procedures on this issue, and supported the elaboration of complementary standards.

Belgium, on the other hand, asserted that ‘defamation of religion’ did not belong in the realm of human rights law, and that the Council’s focus should be on **incitement to hatred**. It linked the Durban Review Conference outcome as a reminder of the need to intensify condemnation of all forms of discrimination. Slovenia informed the Council that the European Commission against Racism and Intolerance has also incorporated religious intolerance in its mandate, focusing on Islamophobia. The Holy See reminded delegates that much of the discussion around religion and freedom of expression has neglected the positive aspects of religious freedom, such as the right to choose and disseminate one’s religious belief. It considered that the Durban Review Conference had succeeded in balancing freedom of expression with the denial of hate speech, and that the road ahead lay in implementation. The International Humanist and Ethical Union drew attention to discrimination against those wanting to change their religion in Malaysia, while the International Institute of Peace raised the persecution of Christian minorities in Pakistan and elsewhere.

Sweden (on behalf of the EU), Egypt (On behalf of NAM), the Russian Federation, China and the African Union all welcomed the positive **outcomes of the Durban Review Conference**, which Cuba considered a ‘milestone’ and China a ‘landmark’. Sweden claimed that challenges to its implementations remain, while Egypt and Cuba called on States, including those who did not participate in the review conference, to implement the Durban *Declaration and Programme of Action* (DDPA) and the conclusions of the Review Conference. The Russian Federation viewed the Council as being responsible for overseeing the implementation of the DDPA, and called for the development of new criteria to measure implementation. The African Union, China and South Africa claimed that lack of political will remained the real challenge in full implementation. The International Movement against All Forms of Discrimination and Racism called on relevant States to pay particular attention to discrimination on the basis of work or descent in implementation. The Beckett Fund for Religious Liberty welcomed the non-reference to defamation religions in the outcome document as a positive step.

Bolivia, Belgium, Slovenia and the National Human Rights Commission of Qatar updated the Council on **national efforts** to combat racial discrimination. The Russian Federation expressed concern with the rise of neo-Nazi organisations in European States. Cuba also decried the rise of far-right wing parties in ‘developed’ countries, anti-terrorist laws designed to discriminate against immigrants, and free use of the internet to disseminate racial hatred. *Recontre Africaine pur la defences de droits de l’homme* called upon the Council to establish a monitoring team to address the 53 murders of albinos in Tanzania, for which there has only been one prosecution to date. Libya called for an international framework that would provide compensation for the consequences of colonialism, which would amount to \$700 trillion.

NGOs that had not been able to do so under the interactive dialogue used the general debate to welcome the report of the Special Rapporteur, and were generally more supportive of his approach than States, although *Ligue Internationale Contre le Racisme et l’Antisémitisme* recommended that he detach himself from the ‘difficult repressive concept of defamation of religion’.<sup>9</sup>

Egypt (on behalf of the OIC) and South Africa regretted that the report of the High Commissioner on all forms of discrimination was not ready for the current session, and Egypt enquired how it was possible that it would be presented to the General Assembly but not to the Council. The International Youth and Student Movement of the United Nations informed the Council that it was the 20<sup>th</sup> anniversary of the special session of the General Assembly on apartheid, and called on the Council to observe this in its programme of work.

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<sup>9</sup> Mouvement contre le racisme et pour l’amitié entre les peuples, Ligue Internationale Contre le Racisme et l’Antisémitisme, B’Nai Brith International, International Human Rights Association of American Minorities.

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- Oral statements made at the Council, as well as other informal documents and draft resolutions are available on the 'OHCHR extranet' at <http://portal.ohchr.org/portal/page/portal/HRCExtranet>. Username: 'hrc extranet' Password: '1session'.
- Web site of the Office of the High Commissioner for Human Rights (OHCHR) on the 12<sup>th</sup> session of the Human Rights Council: <http://www2.ohchr.org/english/bodies/hrcouncil/12session>. For direct access to reports considered, check <http://www2.ohchr.org/english/bodies/hrcouncil/12session/reports.htm>.

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